

The 17th December, 1994

No. 14/13/87-6Lab./991.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of The Transport Commissioner, Haryana, Chandigarh *versus* Shri Maha Singh.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 265 of 90.

Date of receipt : 22-6-89.

Date of decision : 10-11-94.

SHRI MAHA SINGH, S/O ANTAR SINGH, VILLAGE BOHAR, TEH & DISTT.  
ROHTAK . . . . . Applicant

*versus*

1. TRANSPORT COMMISSIONER, HARYANA CHANDIGARH.
2. GENERAL MANAGER, HARYANA ROADWAYS, BHIWANI . . . Respondent-Management.

Present :

Shri Chetan Anand, for the workman.

Shri Jagdish Pawar for the management.

#### AWARD

In exercise of the powers conferred by clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act'), the Governor of Haryana referred the following dispute between Maha Singh and the above mentioned management for adjudication to this Court,—*vide* Labour Department letter No. Bwn./10—89/25913—19, dated the 17 June, 1989:—

Whether termination of services of Maha Singh is justified and in order ? If not, to what relief is he entitled ?

2. According to the workman, he was appointed as Blacksmith on daily wages in January, 1981 by the management, but his services were terminated in August, 1983. According to the workman termination of the services was illegal and unjustified being against the provisions of the Act, and it is also alleged that the principle of 'last come, first go' had not been followed by the management, while terminating his services. He therefore, prayed for reinstatement with full back wages and other consequential benefits.

3. The written statement, filed by the management is of total denial and it was denied that the Applicant was appointed as Blacksmith in the month of January, 1981 and it was also denied that his services were terminated in the year 1983. It was, therefore, stated that provisions of Section 25-F of Act was not attracted in this case. Lastly, it was pleaded that the applicant had filed this case after a long delay and that it was a bogus claim.

4. On the pleadings of the parties, the following issues were framed on 3rd May, 1991 by my learned predecessor :—

- (1) As per terms of reference.
- (2) Whether the claim of the petitioner is bogus and delayed ?
- (3) Relief.

5. The applicant led his evidence in support of his claim. The management have failed to adduce any evidence despite a number of adjournments having been granted and the evidence of the management was closed,—*vide* order dated 10th October, 1994. I have heard Shri Chetan Anand A. R.

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of the workman and Shri Jagdish Pawar, ADA on behalf of the management and have gone through the case file. My findings on the above issues, are as under :—

**Issue No. 1 :**

6. The workman, who appeared as WW-1 has stated that he was appointed as Blacksmith on 1st January, 1981 and that his services were terminated on 20th August, 1983 orally and no notice was given to him, nor any retrenchment compensation was paid to him. He has also adduced in evidence copies of appointment orders Ex.W-2 to Ex. W-4.

7. The workman in this case, also filed an application for directing the management to produce attendance register and muster rolls for the relevant period.—vide Ex. w-1, but the management failed to produce the relevant record on the ground that the same was not traceable. A statement to this effect was made by Hira Singh, clerk, Haryana Roadways, Bhiwani on 29th April, 1994.

8. The plea of the management that the applicant was not appointed as Blacksmith by the management stands belied from the copies of appointment orders Ex. W-2 to Ex. W-4. As already stated above as the management had failed to trace out and produce the relevant record vis attendance register and muster rolls for the relevant period, adverse inference would be raised against the management that if the record was produced, the same would have gone against them. Under these circumstances, the testimony of workman that he had worked from 1st January, 1981 to 19th August, 1983, shall prevail and once it is held so, the provisions of Section 25-F of the Act would be attracted in this case. It is not the case of the management that the said provisions were complied with and as such, the termination of service of the workman is illegal, null and void and he is entitled to reinstatement.

9. As regards back wages, the workman has raised demand notice on 7th September, 1988 i. e. after about five years of his termination. Though this demand notice was raised by the workman after a long delay, but since this Court is bound to answer the reference on merits, it will mould the relief and back wages would be denied to the workman. The workman shall thus be entitled to back wages only from 7th September, 1981 onwards.

10. In the light of discussion above, I answer this issue in favour of the workman.

**Issue No. 2.**

11. This issue was not pressed by the authorised representative of the management and was conceded to by him during arguments. This issue is, therefore, answered against the management.

**Issue No. 3—Relief.**

12. In view of my findings on the above issues, the termination of services of the petitioner is held illegal. The same is hereby set-aside. The petitioner is reinstated in the same post forthwith, with benefit of continuity of service and other consequential benefits. The petitioner shall not be entitled to any back wages for the period from 20th August, 1983 to 7th September, 1988. He shall be entitled to full back wages from 7th September, 1988 onwards. The reference is answered accordingly, with no order as to costs.

The 10th November, 1994

B. R. VOHRA,

Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
Hisar.

Endorsement No. 2402, dated 17th November, 1994.

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
Hisar.